

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

<b>In re:</b>	§	<b>MDL Docket No. 4:03CV1507WRW</b>
	§	
<b>PREMPRO PRODUCTS LIABILITY</b>	§	<b>ALL CASES</b>
<b>LITIGATION</b>	§	
	§	

**ORDER Re: Witnesses' Hormone Therapy Use**

Before the Court is Plaintiffs' Motion to Compel Wyeth's Deponents to Answer Questions Regarding Deponent's Use and Assessment of Hormone Therapy (Doc. No. 775). Defendants have responded to the motion in writing and at several hearings.

Plaintiffs contend that testimony regarding hormone therapy use by current and former personnel of Defendants is relevant to showing whether adverse information about the effects of the drugs motivated the witnesses or their family members to discontinue or alter their use of hormone therapy drugs. Plaintiffs note that Merck & Co., Inc., represented by the same law firm that represents Wyeth in these proceedings, made its executives' continued use of Vioxx a theme during the first Vioxx trial. Defendants have declined to rule out the use of such testimony in this litigation, pointing out that such testimony by an executive is relevant in answer to the allegation that he or she knew that the medication was "defective" and withheld that information. Therefore, Plaintiffs contend they have the right to explore employees' continued or discontinued hormone therapy use during discovery so they can be prepared to combat any such arguments at trial.

Defendants assert that a non-party employee's medical history, especially hormone therapy use, is a private matter and that may be privileged. According to Defendants, it is more

private and more deserving of protection than the dollar amount of a non-party employee's compensation, which the Court has held is not discoverable. Defendants argue that this is all the more true, as Plaintiffs do not seek to ask, "Yes or No," whether an employee continued to use hormone therapy after July 2002, but seek to probe into the reasons why, including physician-patient communications.

After considering the arguments by both sides, the following is directed:

1. Plaintiffs will be permitted to ask employees about the use of hormone therapy by them and their family members. The questions may explore the type, nature and duration of use, and decisions to continue or terminate use.
2. Plaintiffs will be permitted to ask any previously deposed witness the same types of questions, regarding the deponent's or the deponent's family members' hormone therapy use, in a telephone deposition.
3. The deponents may refuse to answer on the ground that the information is privileged. A deponent's decision to answer one or more questions does not waive such deponent's right to refuse to answer subsequent questions based upon the deponent's assertion of a privacy privilege.
4. Defendants are not obligated, at this time, to respond to the interrogatories regarding employees' use of hormone therapy.

IT IS SO ORDERED this 9th day of December, 2005.

/s/ Wm. R. Wilson, Jr.  
UNITED STATES DISTRICT JUDGE